

Note: In these draft regulations, proposed changes are:

- Proposed fee changes, on page 6
- Inspections, pages 1 to 6
- Update building, food, and fire safety codes, pages 7-10

002.02B Permitting, aiding or abetting the commission of any unlawful act; or

002.02C Conduct or practices detrimental to the health or safety of residents and employees of the facility; provided that this provision shall not be construed to have any reference to healing practices authorized by law.

Should the department determine to deny, suspend, or revoke a license, it shall send to the applicant or licensee, by either registered or certified mail, a notice setting forth the particular reasons for the determination. The denial, suspension, or revocation shall become final thirty days after the mailing of the notice, unless the applicant or licensee, within such thirty-day period, shall give notice of desire for hearing. Thereupon the applicant or licensee shall be given a fair hearing before the Department of Health of the State of Nebraska and shall have the right to present such evidence as may be proper. On the basis of such evidence the determination involved shall be affirmed or set aside, and a copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by either registered or certified mail to the applicant or licensee. The decision shall become final thirty days after a copy thereof is mailed, unless the applicant or licensee within such thirty-day period appeals the decision under Section 71-2027, Reissue Revised Statutes of Nebraska, 1943. The procedure governing hearings authorized by this section shall be in accordance with Department of Health Rules of Practice and Procedure. A full and complete record shall be kept of all proceeding. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by Department of Health Rules of Practice and Procedure.

~~002.03 Prerequisite Inspections. Upon receipt of a full and complete application for an initial license, the Department shall make or cause to be made an inspection of the premises within thirty (30) days thereof, unless the applicant specifically states that the facility will not be ready for occupancy until a later specified date. A written report describing any deficiencies found in the facility shall be mailed to the applicant within seven (7) working days after such inspection. A final decision by the Department for approval or disapproval of a full and complete application for a license shall be made within one hundred and twenty (120) days after the submission of A full and complete application by the facility. The Department, through its authorized representatives, may inspect the building or structure of any applicant for or holder of a license to operate a Center for the Developmentally Disabled to determine compliance with these regulations. Inspection by the Department, or its authorized representatives, at any time, of a Center for the Developmentally Disabled is a condition of continued licensure.~~

3-002.03 INSPECTIONS: To determine compliance with operational, care, treatment, and physical plant standards, the Department inspects a center for the developmentally disabled (CDD) prior to and following licensure. The Department determines compliance through on-site inspections, review of schematic and construction plans, and reports of qualified inspectors.

Re-inspections are conducted by on-site inspection or review of documentation requested by the Department.

3-002.03A Initial Inspection: The Department may conduct an announced initial on-site inspection to determine compliance with 175 NAC 3-003, 3-004, and 3-005. The inspection will be conducted within 30 working days, or later if requested by the applicant, of receipt of a completed application for an initial license. The Department will provide a copy of the inspection report to the facility within 10 working days after completion of an inspection.

3-002.03B Results of Initial Inspection

3-002.03B1 When the Department finds that the applicant fully complies with the requirements of 175 NAC 3-003, 3-004, and 3-005, the Department will issue a license.

3-002.03B2 When the Department finds that the applicant had complied substantially but has failed to comply fully with the requirements of 175 NAC 3-003, 3-004, and 3-005 and the failure(s) would not pose an imminent danger of death or physical harm to persons residing in the facility, the Department may issue a provisional license. The provisional license:

1. Is valid for up to one year; and
2. Is not renewable.

3-002.03B3 When the Department finds the applicant has one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety, or security of the persons residing in the facility, the Department may send a letter to the facility requesting a statement of compliance. The letter will include:

1. A description of each violation;
2. A request that the facility submit a statement of compliance within ten working days; and
3. A notice that the Department may take further steps if the statement of compliance is not submitted.

3-002.03B4 The statement of compliance must indicate any steps that have been or will be taken to correct each violation and the estimated time to correct each violation. Based on the statement of compliance, the Department will take one of the following actions:

- 1.If the applicant submits and implements a statement of compliance that indicates a good faith effort to correct the violations, the Department will issue either a regular license or a provisional license; or
2. If the applicant fails to submit and implement a statement of compliance that indicates a good faith effort to correct the violations, the Department may deny the license.

3-002.03B5 When the Department finds the applicant fails to meet the requirements of 175 NAC 3-003, 3-004, and 3-005 and the failure(s) would create an imminent danger of death or serious physical harm, the Department will deny the license.

3-002.03C Physical Plant Inspections: The Department will conduct inspections for conformity with construction plans and compliance with 175 NAC 3-003 and 3-004 at new facilities or new construction prior to use or occupancy.

3-002.03C1 On-site progress inspections of the physical plant by qualified inspectors for conformity to construction documents and compliance with code requirements may occur at any time after construction has begun and prior to the concealment of essential components.

3-002.03C2 The Department will conduct an on-site final inspection of the physical plant prior to use or occupancy. In lieu of an on-site final inspection by the Department, the Department may accept a certification from a licensed architect or engineer that the physical plant meets the requirements of the Health Care Facility Licensure Act and 175 NAC 3-003 and 3-004 and that the facility is complete and ready for occupancy in accordance with Department-approved plans. The architect or engineer may construct a certification form or obtain a certification form from the Department.

3-002.03C2a The certification must state:

1. Name of the architect or engineer;
2. Name of the professional entity with which he or she is affiliated, if any;
3. Address and telephone number;
4. Type of license held, the state in which it is held, and the license number;
5. Name and location of the facility;
6. Name(s) of the owner(s) of the facility;
7. New construction had the building structure and plumbing rough-in inspected by a qualified inspector prior to the time these would be concealed and preclude observation;
8. All new construction, care and treatment room sizes, bedroom sizes, handrails, grab bars, hardware, building systems, **protective** shielding, privacy curtains, appropriate room finishes, and other safety equipment are completed in accordance with approved construction plans; and
9. The facility is furnished, cleaned, and equipped for the care and treatment to be performed in compliance with 175 NAC 3-003 and 3-004 and approved for use and occupancy.

3-002.03C2b The certification must have attached to it:

1. Copies of documents from other authorities having jurisdiction verifying that the facility meets the following codes
 - a. New construction must comply with the following codes and guidelines to provide a safe and accessible environment that is conducive to the care and treatment to be provided:
 - (1) Building: Building Construction Act, Neb. Rev. Stat. §§ 71-6401 to 71-6407;
 - (2) Plumbing: Plumbing Ordinance or Code, Neb. Rev. Stat. § 18-1915;
 - (3) Electrical: State Electrical Act, Neb. Rev. Stat. §§ 81-2101 to 81-2143;
 - (4) Elevators: Nebraska Elevator Code, Neb. Rev. Stat. § 48-418.12 and Department of Labor Regulations, 230 NAC 1;
 - (5) Boiler: Boiler Inspection Act, Neb. Rev. Stat. §§ 48-719 to 48-743;
 - (6) Accessibility: Nebraska Accessibility Requirements, State Fire Marshal Regulations, 156 NAC 1 to 12;
 - (7) Energy: Nebraska Energy Code, Neb. Rev. Stat. §§ 81-1608 to 81-1626, for construction initiated on or after July 1, 2005.
 - b. The facility must comply with the following applicable codes and standards to provide a safe environment:
 - (1) Fire Codes: Nebraska State Fire Code Regulations, State Fire Marshal, 153 NAC 1; and
 - (2) The Food Code, Neb. Rev. Stat. § 81-2,244.01, as published by the Nebraska Department of Agriculture, except for compliance and enforcement provisions.
2. Copies of certifications and documentation from equipment and building system installers verifying that all equipment and systems installed are operating and approved for use and occupancy; and
3. Schematic floor plans documenting actual room numbers and titles, bed locations, capacity, and life safety information.

3-002.03D Timing of Compliance Inspections: The Department may, following the initial licensure of a CDD, conduct an unannounced onsite inspection at any time as it deems necessary to determine compliance with 175 NAC 3-003, 3-004, and 3-005. The inspection may occur based on random selection or focused selection.

3-002.03D1 Random Selection: Each year the Department may inspect up to 25% of the CDD's based on a random selection of licensed CDD's.

3-002.03B2 Focused Selection: The Department may inspect a CDD when the Department is informed of one or more of the following:

1. An occurrence resulting in resident death or serious physical harm;

2. An occurrence resulting in imminent danger to or the possibility of death or serious physical harm to residents;
3. An accident or natural disaster resulting in damage to the physical plant and having a direct or immediate adverse effect on the health, safety, and security of residents;
4. The passage of five years without an inspection;
5. A complaint alleging violation of the Health Care Facility Licensure Act or 175 NAC 3;
6. Complaints that, because of their number, frequency, or type, raise concerns about the maintenance, operation, or management of the facility;
7. Financial instability of the licensee or of the licensee's parent company;
8. Outbreaks or recurrent incidents of physical health problems at a CDD, such as dehydration, pressure sores, or other illnesses;
9. Change of services, management or ownership; or
10. Any other event that raises concerns about the maintenance, operation, or management of the CDD.

3-002.03E Results of Compliance Inspections

3-002.03E1 When the inspection reveals violations that create imminent danger of death or serious physical harm or have a direct or immediate adverse effect on the health, safety, or security of residents residing in the CDD, the Department will review the inspection findings within 20 working days after the inspection. If the evidence from the inspection supports the findings, the Department will impose discipline in accordance with the Health Care Facility Licensure Act and 175 NAC 3-002.

3-002.03E2 When the inspection reveals one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse effect on the health, safety, or security of residents residing in the CDD, the Department may request a statement of compliance from the CDD. The statement of compliance must indicate any steps that have been or will be taken to correct each violation and the estimated time to correct each violation. Based on the statement of compliance, the Department will take one of the following actions:

1. If the CDD submits and implements a statement of compliance that indicates a good faith effort to correct the violations, the Department will not take any disciplinary action against the license; or
2. If the CDD fails to submit and implement a statement of compliance, the Department will initiate disciplinary action against the CDD license, in accordance with the Health Care Facility Licensure Act and 175 NAC 3-002.

3-002.03F Re-Inspections

3-002.03F1 The Department may conduct re-inspections to determine if the facility fully complies with the requirements of 175 NAC 3-003, 3-004, and 3-005. Re-inspection may consist of an on-site inspection or a review of documentation requested by the Department. Re-inspection occurs:

1. After the Department has issued a provisional license;
2. Before a provisional license is converted to a regular license;
3. After the Department has imposed disciplinary action;
4. Before a disciplinary action is modified or terminated; or
5. After the Department receives a statement of compliance for cited violations.

3-002.03F2 Following a re-inspection, the Department may:

1. Convert a provisional license to a regular license;
2. Affirm that the provisional license is to remain effective; or
3. Modify a disciplinary action in accordance with 175 NAC 3-002 and the Health Care Facility Licensure Act; or
4. Grant full reinstatement of the license.

002.04 Renewal. Approximately sixty (60) days prior to the expiration date of the license, a renewal application form will be provided by the Department. The required statutory annual license fee shall accompany the application for renewal. Beginning December 1, 1984, all licenses, initial or renewal, shall expire on November 30 of each year.

002.04A Fees: The licensee must pay fees for licensure and services as set forth below:

1. Initial and renewal licensure fees: \$150~~200~~
2. Duplicate license: \$10
3. Refunds for denied applications:
 - a. If the Department did not perform an inspection, the license fee is refunded except for an administrative fee of \$25.
 - b. If the Department performed an inspection, the license fee is not refunded.

002.05 Notification. The Department shall be notified in writing by the licensee within forty-eight (48) hours whenever a licensed Center for the Developmentally Disabled is sold, leased, discontinued, moved to a new location or has a change of administrator.

002.06 Separate License. Separate buildings or structures on the same premises under one management shall require only one license; however, upon request by the licensee, separate licenses shall be issued. Licenses shall not be transferable, or assignable, and shall be posted in a conspicuous place on the licensed premises.

003 PHYSICAL PLANT REQUIREMENTS FOR GROUP RESIDENCES

003.01 Group Residences, Approval of Plans.

003.01A Whenever construction of or an addition to a Center for the Developmentally Disabled is contemplated by a licensee or an applicant, plans and specifications shall be submitted for review to the State Department of Health in accordance with Nebraska Revised Statute §71-2022 and to the State Fire Marshal or qualified local fire prevention personnel specifically delegated responsibility by the State Fire Marshal as to fire safety. The submission must be made in not less than two (2) stages -- preliminary and final. Construction work shall not be placed on market for

bids or work commenced until the State Department of Health and the State Fire Marshal or qualified local fire prevention personnel have approved the final drawings and specifications. Any deviation from these final documents must have approval from the State Department of Health in writing prior to the work being performed. This standard shall not apply in the making of minor repairs or in matters of general maintenance.

003.01B In new construction and additions the preliminary stage shall include the following:

003.01B1 Plot plan showing size, shape of entire site, location of proposed building or structure and relation to any existing buildings or structures, adjacent streets, roads, highways, sidewalks, and railroads. The plan shall also show properly designated size, characteristics, and location of connections to water, sewer, and gas lines.

<u>Area Name</u>	<u>General Illumination (foot candles)</u>
Recreation and dining	10
Corridors and halls	5
Storage room	3
Resident room (reading)	20
Resident room (general)	10
Bath and toilet area	10
Medicine area	20
Kitchen area	10
Laundry	8
Mechanical room	5

003.04I2 Extension cords or temporary outlets are prohibited. Bare, incandescent bulbs are prohibited in resident areas.

003.04J Building Codes. Each center for the developmentally disabled must conform to at least the following codes and standards:

003.04J1 ~~"Nebraska Electrical Code", National Electrical Code, except for tables 310-20 through 310-30 and figure 310-1, issued and adopted by the National Fire Protection Association in 1984, Publication Number 70-1984, and filed by the State Electrical Board with the Secretary of State and with the Revisor of Regulations.~~

003.04J2 ~~American Standards Plumbing Code (ASA A40.8-1955) published by the American Society of Mechanical Engineers, and filed by the State Fire Marshal with the Revisor of Regulations.~~

003.04J3 ~~Safety Code for Elevators, latest edition published by the Nebraska State Department of Labor prior to the adoption of these regulations and filed by same with the Revisor of Regulations as 223 NAC 1.~~

003.04J4 ~~Regulations promulgated by the Nebraska State Fire Marshal Governing Safety to Life from Fire and Like Emergencies Buildings and Structures; And General Fire Prevention, effective October 18, 1973, as~~

~~amended (Nebraska Life Safety Code), Rule 1 of the State Fire Marshal, and Appendix "B", Rule 2 of the State Fire Marshal, both in the latest edition filed by the State Fire Marshal with the Revisor of Regulations prior to the adoption of these regulations.~~

1. Electrical: State Electrical Act, Neb. Rev. Stat. §§81-21-1 to 81-2143;
2. Plumbing: Plumbing Ordinance or Code, Neb. Rev. Stat. §§18-1915;
3. Elevators: Nebraska Elevator Code , Neb. Rev. Stat. §48-418.12 and Department of Labor regulations at 230 NAC 1; and
4. Fire Codes: Nebraska State Fire Code regulations, State Fire Marshal, 153 NAC 1

The codes and standards mentioned in the preceding ~~subparts 003.04J1 through 003.04J4~~ items 1 – 4 are hereby adopted and incorporated by reference; they have the same force and effect as if set out verbatim in this part.

and shall be of suitable construction. All garbage and rubbish shall be disposed of in a manner so as to prevent the attraction of insects, rodents, and vermin.

004.08 Health of Personnel.

004.08A All employees shall have a pre-employment medical examination which shall consist of a physical examination by a physician. All persons shall have an annual tuberculin skin test except for those who have a positive reaction and are without x-ray evidence of active disease shall be required to have either chemoprophylaxis against tuberculosis infection or a chest x-ray every three years. Results of such examinations and tests shall be retained as part of the person's employment record.

004.08B Any person (including any volunteer) who is afflicted with a disease in a communicable stage, or who is a carrier of a communicable disease, or who has an open wound or sore, is not permitted to work in a capacity (including food service) where there is a likelihood of transmitting the disease or infection to a resident or to other personnel.

004.09 Food Service. Each facility shall comply with the provisions of the Nebraska Pure Food Act, Neb. Rev. Stat. §81-216.01 to 81-216.37 (Reissue 1981) as they pertain to the Food Service Code, which means the 1976 Recommendations of the Food and Drug Administration entitled Food Service Sanitation Manual Including A Model Food Service Sanitation Ordinance as it exists on August 1, 1981, except sections 10-601 and 10-602 of such code [Neb. Rev. Stat. § 81-216.03 (1981)]. This code, in the format published by the Nebraska Department of Agriculture, Bureau of Dairies and Foods, is hereby adopted and incorporated by reference and shall have the same force and effect as if set out verbatim in this subsection (Attachment 2) the Food Code, Neb. Rev. Stat. §81-2,244.01 as published by the Nebraska Department of Agriculture except for compliance with enforcement provisions.

004.09A Menu Planning:

004.09A1 Menus shall be planned at least a week in advance.

004.09A2 Menus shall be reviewed and approved by a dietician before service.

004.09A3 Records of substitutions shall be made. Substitutions shall be of equal nutritional value.

004.09A4 Records of menus shall be filed for six months in the center.

004.09D3 Pasteurized Grade A milk and milk products shall be used.

004.10 Sewage Disposal. The sewage shall discharge into a sewage system which complies with the rules and regulations of the Department of Environmental Control of the State of Nebraska.

004.11 State Fire Safety Code. As a prerequisite to and condition of continued licensure, each building or structure in which a Center for the Developmentally Disabled is housed, shall comply with the ~~Regulations Promulgated by the Nebraska State Fire Marshal Governing Safety to Life From Fire and Like Emergencies in Buildings and Structures; and General Fire Prevention effective October 18, 1973 as amended (Nebraska Life Safety Code), Rule 1 of the State Fire Marshal and Appendix "B", Rule 2 of the State Fire Marshal, both in the latest edition filed by the State Fire Marshal with the Revisor of Regulations prior to the adoption of these regulations~~ Nebraska State Fire Code Regulations, State Fire Marshal, 153 NAC 1. . Any building or structure within this scope used or intended to be used for the housing of non-ambulatory, or of four (4) or more persons, shall have installed or maintained proper operating conditions and an approved automatic fire alarm system. Any building or structure within this scope or subdivision used or intended to be used for the housing of less than four (4) ambulatory persons shall have a minimum of a single station smoke detection system.

Every person, firm, corporation or other entity maintaining or operating any facility for the care of the mentally handicapped, developmentally disabled, or physically disabled, shall maintain documentation in each resident's record, on the annual physical, within fifteen (15) days of admission, or readmission of a person, stating whether or not the resident is ambulatory or non-ambulatory person and enumerating the reasons for such classification. Such statement shall also be filed for each resident residing within the facility within thirty (30) days of the effective date of these regulations.

It shall be a violation of these regulations for any person, firm, or corporation required to file a statement pursuant to this section to include false statements therein. The ambulatory or non-ambulatory status of any mentally handicapped, developmentally disabled, or physically disabled person within this scope shall be determined by a physician.

004.12 Insect and Rodent Control. Every facility shall or equipped so as to prevent the entrance, harborage, or breeding of flies, roaches, bedbugs, rats, mice, and all other insects and vermin. Cleaning renovation, or fumigation by licensed pest control operator for The elimination of such pests shall be used when necessary.

004.13 Water Supply. Every facility shall have a safe, sanitary, and potable water supply, connected to a municipal system when available, which complies with the provisions of Title 179, Nebraska Administrative Code,